the Ordinance, and whether in that case they were dutiable within the meaning of the same section.

As regards the second point, as there was no prosecution I do not think that the presumption under section 76 applies. However, when people are found at 9 p.m. landing from a sampan bottles labelled Hennessy's Brandy and stamped "Singapore duty not paid", there is evidence on which a Court can find that duty had not been paid.

In order to prove that the contents were "intoxicating liquor" the prosecution produced a certificate. This certificate did not in terms say how much "pure alcohol by weight" there was in the contents but merely the percentage of proof spirit. I think that this certificate is sufficient although it would have been more satisfactory if it followed the terms of the definition. The more substantial question is as to whether the matter could be proved by a certificate. Section 427 of the Criminal Procedure Code is limited in its scope to "any inquiry trial or other proceeding under this Code". I do not think that the particular proceedings were under the Criminal Procedure Code. By section 3 the Criminal Procedure Code is only applied to the enquiry into and trial of offences. Therefore I think the certificate was not admissible and the chemist should have been called.

The order of the Magistrate is set aside.

Order for forfeiture set aside.

Solicitors: *Braddell Bros.*

PERIANNAN & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Wilson J.) September 17, 1954]

[K. L. — Criminal Appeals Nos. 72, 73, 74, & 75 of 1954]

Emergency Regulations, 1951, regs. 11 & 12 — Jurisdiction of Sessions Court — Persons found out of doors during curfew hours — Sentence of 5 years' imprisonment or fine of $5,000 or to both such imprisonment and fine — Courts Ordinance, 1948, ss. 63, 64, 85 & 87 — Powers of Magistrate's Court — Emergency (Criminal Trials) Regulations, 1948, reg. 20A.

The accused persons in these cases pleaded guilty to charges that they were found out of doors during curfew hours. They were tried by a Magistrate. It was argued that the Magistrate had no jurisdiction to try these cases. Reg. 12 of the Emergency Regulations, 1951, gives power to a Sessions Court, with one limitation, to try any offence against the Regulations but limits the power of sentence to one of 5 years' imprisonment, or a fine of $5,000, or to both such imprisonment and fine. It was argued that without this regulation even a Sessions Court could not try a case under the Emergency Regulations as it was said that under the Courts Ordinance it could not pass a sentence of imprisonment and a fine.

Held: (1) a Sessions Court, in spite of the wording of s. 63 of the Courts Ordinance, can pass a sentence of imprisonment and a fine and therefore can try a case for an offence under the Emergency Regulations, 1951; (2) similarly a First Class Magistrate has jurisdiction to try a case for an offence under the Emergency Regulations, 1951; (3) the Emergency (Criminal Trials) Regulations, 1948, reg. 20A, does not affect the right of a Magistrate to try such Emergency cases as are within his jurisdiction in the area where he normally holds jurisdiction.

MAGISTRATE'S CRIMINAL APPEALS.

Morris Edgar for the appellant.

B. Sheldon (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Wilson J.: — In these cases the accused persons were charged that they were found out of doors during curfew hours between 7 p.m. and 6 a.m. They all pleaded guilty and said that they had gone to the pictures. They were tried by a Magistrate. It has been argued before me that the Magistrate had no jurisdiction to try these cases which have come before me in revision. I have been referred to regulation 12 of the Emergency Regulations, 1951, which gives power to a Sessions Court, with one limitation, to try any offence against the Regulations but limits the power of sentence to one of five years' imprisonment, or a fine of $5,000, or to both such imprisonment and fine. It has been argued that without this regulation even a Sessions Court could not try a case under the Emergency Regulations as it is said that under the Courts Ordinance it cannot pass a sentence of imprisonment and a fine. I have also been referred to regulation 11 which states that a person guilty of an offence against the Regulations shall be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding $5,000, or to both such imprisonment and such fine.

The powers of a Magistrate's Court under section 85 of the Courts Ordinance are confined to trying offences in which the maximum term of imprisonment does not exceed three years or which are punishable with fine only. It has been argued that that section does not permit a Magistrate to try a case where a sentence of three years' imprisonment and a fine can be imposed. Section 63 of the Courts Ordinance, which deals with the powers of a Sessions Court, relates to offences where imprisonment does not exceed seven years or which are punishable with fine only. Section 64 of the Courts Ordinance, however, allows a Sessions Court to pass any sentence allowed by law not exceeding: (a) three years' imprisonment of either description; (b) a fine of four thousand dollars; (c) whipping up to twelve strokes; or (d) any sentence combining any of the sentences aforesaid. Obviously, a Sessions Court, in spite of the wording of section 63 of the Courts Ordinance, can pass a sentence of

imprisonment and a fine. Section 87 of the Courts Ordinance is in the same terms as section 63 of the Courts Ordinance and clearly allows a First Class Magistrate to pass a sentence both of imprisonment and a fine.

In these circumstances, I hold that a First Class Magistrate has jurisdiction to try a case for an offence under the Emergency Regulations, 1951.

My attention has also been drawn to regulation 20A of the Emergency (Criminal Trials) Regulations, 1948. It is sufficient to say that, in my opinion, the meaning of that section is that the High Commissioner may authorise, in writing, any Magistrate to hold a Court to try certain cases as specified in the schedule thereto which are normally outside his territorial jurisdiction.

I have come to the conclusion that this regulation does not affect the right of a Magistrate to try such Emergency cases as are within his jurisdiction in the area where he normally holds jurisdiction.

All the accused in these cases were sentenced to a fine of $75 each, with the exception of one who was fined $10. I am told, and it has not been contradicted by the Deputy Public Prosecutor, that the circumstances were that the labourers on one estate went during curfew hours to another estate to see a private cinema show given by the management of that estate. I have, in fact, been told that they were invited. In order, however, to get from one estate to the other estate they had to pass through a very short part of a curfew area. It is to be noted that all these cases arose out of the same incident and, in all, there were 29 offenders. It is not suggested that these persons had any connection with the terrorists or were doing anything to assist the terrorists. While I agree that a breach of curfew regulations would normally deserve a severe penalty I feel that, in all the circumstances of these cases, a fine of $30 would have been sufficient. I, therefore, order that the amount of all fines in excess of $30 should be refunded to the accused persons.

Order accordingly.

Solicitors: *Bannon & Bailey.*

Re OSMAN BIN ABDULLAH

[A. Cr. J. (Bellamy J.) October 28, 1954]

[K. L. — Criminal Revision No. 35 of 1954]

Criminal law and procedure — Inquiry under Chapter XVII of the Criminal Procedure Code (Cap. 6) — Duty of Magistrate — Assessing evidence.

When all the evidence has been taken, the Magistrate's duty simply is to inquire, whether a *prima facie* case has been made out against the accused by credible evidence. If the answer to this question is in the affirmative, then the Magistrate is bound to commit the accused for trial. On the other hand, if the answer is in the negative, the Magistrate is bound to discharge the accused, unless the evidence discloses an offence over which he has jurisdiction in which case he may either deal with it himself or order it to be tried by another Magistrate. It is no part of the inquiring Magistrate's duty to consider possible lines of defence to the charge which the accused may raise in the course of the inquiry or to decide whether there are sufficient grounds for convicting the accused. That is the function of the trial Court. It is a safe rule that where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving the doubt and assessing the evidence should be left to the Court of a Judge.

Case referred to:—

(1) *In re Bai Parvati* (1911) I.L.R. Bom. 163 at 168.

Cur. Adv. Vult.

CRIMINAL REVISION.

Bellamy J.: — Osman bin Abdullah was brought before the Magistrate in the Magistrate's Court at Rawang with a view to committal for trial before the Court of a Judge on a charge of voluntarily causing grievous hurt to Eric Esme Monteiro by means of an instrument which, used as a weapon of offence, is likely to cause death, an offence under section 326 of the Penal Code. A good deal of evidence was called for the prosecution and the Magistrate, having heard all the evidence tendered, decided not to commit the accused for trial, but instead he framed a charge under section 335 of the Penal Code, and after it had been read over and explained to the accused he ordered the accused to be tried in the Sessions Court at Rawang. The Public Prosecutor now applies under section 325 of the Criminal Procedure Code for revision of this order.

The question before me now is whether this order of the Magistrate should be sustained.

The conclusion at which the Magistrate arrived was expressed by him in these words:—

"From the evidence of P.W. 8 and P.W. 9, two of three neutral eye-witnesses of the incident, it is disclosed that the accused caused grievous hurt to Eric Esme Monteiro — P.W. 6 — only after the latter drew out a penknife from his trouser pocket and tried to stab the accused with it. As it was not proved by the prosecution that the accused was the aggressor in the fight, the provocation (i.e., the attempt to stab the accused with a penknife by P.W. 6) therefore was not sought or voluntarily provoked by the accused as an excuse for causing grievous hurt to P.W. 6. Under the circumstances I feel that the original charge should be reduced to the committing of an offence punishable under section 335 of the Penal Code."

There could be no doubt on the evidence, and the Magistrate rightly found that it had been established, that the accused caused grievous hurt to the complainant, Eric Esme Monteiro. Furthermore, there could be no doubt on the evidence, if it was believed,